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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,049	12/17/2001	Michael Ficco	PD-201139	2100

7590 09/26/2006

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Patent Docket Administration  
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EXAMINER

HOSSAIN, FARZANA E

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/022,049

Applicant(s)

FICCO ET AL.

Examiner

Farzana E. Hossain

Art Unit

2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.



**CHRIS KELLEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600**

Continuation of 11. does NOT place the application in condition for allowance because:

Claim 32:

The applicant argues that Bhatt does not disclose temporally sorting EPG data based upon a current time into data that is most likely to be immediately accessed for an application, and data that is most likely to be accessed in the more distant future (Pages 2-7). The applicant's arguments makes the point that Bhatt discloses sorting data without temporal concerns and when the data is sorted is irrelevant. The applicant argues that the examiner's interpretation of the current time is not supported by Bhatt's cited passage.

In response to the arguments, Bhatt discloses that an algorithm is performed for storing most preferred data or data to be immediately accessed in a physical memory and other data or data to be accessed in the more distant future being stored in the mass storage device or hard disk (Page 3, paragraph 0031). Bhatt discloses that preferred programming can be programming for a particular time slot (Figure 4, 448). Therefore, the processor performs sorting of programming based on a time or temporally sorting the data (Figure 4).

The claimed limitation is temporally sorting data based based upon a current time. Bhatt discloses temporally sorting as the sorting is based on time slots. Bhatt also disclose that the sorting occurs when the programming information is updated which is at the current time (Page 3, paragraph 0031). Therefore, there is sorting of time slots based upon a current time. The applicant argues that it is irrelevant when the data is actually sorted, and the applicant argues that Bhatt discloses the sorting is conducted for all programming for all times regardless of current time. The applicant's disclosure discloses that the temporoally sorting of data is based on today's data or now data (Page 5, paragraph 0024). The examiner would once again point out that the claim is met by Bhatt as the data is temporally sorted (time slots) based upon a current time or based on the time the data is received.

The applicant's claim is met by Bhatt in the current form. The examiner suggests that the claim limitation "data be temporally sorted based upon a current time" be written more clearly as this can be met by sorting data at a current time. The applicant's arguments have been considered that Bhatt does not temporally sort data based upon a current time as the time of the programming, but the arguments are not persuasive.

Claims 1 and 16:

The applicant argues that Tsukidate in view of Bhatt does not disclose temporally sorting data based upon a current time into data that is most likely to be immediately accessed for an application, and data that is most likely to be accessed in the more distant future (Pages 5-7). The applicant argues Bhatt fails to describe the limitation.

See above arguments of Claim 32.